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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re application of: Tony M. Pearce)
Application No.: 09/932,393)
Filed: August 17, 2001)
For: CUSHIONS WITH NON-INTERSECTING-)
COLUMNAR ELASTOMERIC MEMBERS)
EXHIBITING COMPRESSION INSTABILITY)
Examiner: Peter D. Mulcahy)
Group Art Unit: 1713)
Attorney Docket: 03886.029 / 5050.1 P)

United States Patent and Trademark Office
Commissioner for Patents
Mail Stop Non-Fee Amendment
P.O. Box 1450
Alexandria, VA 22313-1450

DECLARATION OF TONY M. PEARCE

I, Tony M. Pearce, hereby declare that:

Background

1. I am at least 18 years of age.
2. I am the inventor of United States Patent Application Serial No. 09/932,393 (the “393 Application”), filed August 17, 2001.
3. I am employed by EdiZONE, LC (“EdiZONE”) in the position of president and LC manager.
4. EdiZONE is the owner of the ‘393 Application.

The License

5. On X date, Schering Plough, Inc. ("Schering Plough") licensed the '393 Application on an exclusive basis (the "Agreement"). A copy of the executed Agreement with Schering Plough is attached hereto as Exhibit "A."
6. As consideration, Schering Plough paid EdiZONE \$500,000.

Respect for the '393 Patent

7. The invention is now represented through Schering Plough's Dr. Scholl's product line as the "Massaging Gel Insoles" available in the pharmacy department of most grocery stores and discount stores. A printout from Dr. Scholl's website is attached as Exhibit "B."
8. Large well funded companies with patent attorneys on retainer, such as Schering Plough, generally do not pay significant sums of money for mere obvious advances in technology.
9. Schering Plough was willing to pay \$500,000 for the invention of this patent application as it represents genuine value to Schering Plough's Dr. Scholl's shoe insole business.

I hereby declare that all statements made herein of my own knowledge are true and that all statements made on information and belief are believed to be true; and further that these statements were made with the knowledge that willful false statements and the like so made are punishable by fine or imprisonment, or both, under Section 1001 of Title 18 of the United States Code and that such willful false statements may jeopardize the validity of the application of any patent issued thereon.

Dated: _____

30 September 2003

Signed: _____

Jonny Mearce



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Our Products

Insoles

- ☐ Athlete's Foot
- ☐ Blister
- ☐ Bunion
- ☐ Callus
- ☐ Corn
- ☐ Inserts
- ☐ Nail fungus
- ☐ Odor Destroyers
- ☐ Pedicure Creams, Scrubs, & Lotions
- ☐ Pedicure Tools
- ☐ Powders
- ☐ Wart

Insoles

Massaging Gel Insoles

- ☐ All-Purpose Insoles
- ☐ Advantage® Comfort Insoles
- ☐ Step Well® Insoles
- ☐ Extra Support Insoles
- ☐ Advantage® PowerWalk
- ☐ Advantage® Sport
- ☐ Advantage® Work Insoles

Tell Me More

- ☐ Coupon
- ☐ Tell a Friend

Dr. Scholl's® Massaging Gel Insoles

- Insole is made with the softest gel you can buy
- Provides up to 2x more cushioning and shock absorption than other gel insoles



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Shoes & Sandals

Privacy Policy

Terms & Conditions

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License Agreement

This License Agreement ("Agreement") is entered into as of the last date of signature appearing below (the "Effective Date") by and between the following Parties:

LICENSOR: EdiZONE, LC
a Utah limited liability company
220 N. 1300 W. #1
Pleasant Grove, UT 84062

LICENSEE: Schering-Plough HealthCare Products, Inc.
a Delaware corporation
3030 Jackson Avenue
Memphis, Tennessee 38151

Recitals

WHEREAS, Licensor is the owner of certain Technology Rights (as defined in Paragraph 1.1 below);

WHEREAS, Licensee wishes to obtain a license of the Technology Rights on the terms and conditions set forth herein;

WHEREAS, Licensor desires to grant a license of the Technology Rights only on the terms and conditions set forth herein;

NOW, THEREFORE, the Parties agree as follows:

SECTION 1. - DEFINITIONS

The following capitalized terms, whether used in the singular or plural, shall each have their respective defined meanings as set forth below:

Affiliates. "Affiliates" shall mean any individual or entity directly or indirectly controlling, controlled by or under common control with, a Party to this Agreement. For purposes of this Agreement, the direct or indirect ownership of fifty percent (50%) or more of the outstanding voting securities of an entity, or the right to receive fifty percent (50%) or more of the profits or earnings of an entity shall be deemed to constitute control. Such other relationship as in fact results in actual control over the management, business and affairs of an entity shall also be deemed to constitute control.

Confidential Information. "Confidential Information" shall mean any and all proprietary and/or confidential data and information disclosed by one Party to the other Party

pursuant to this Agreement, including, without limitation, Know-How, trade secrets, any other information concerning or relating to Footwear Insoles, designs, patent applications, formulas, processes, recipes, equipment, prototypes, models, mock-ups, samples, materials, manufacturing methods, business plans, marketing information, customer lists or forecasts, provided that within thirty (30) days of disclosure by one Party to the other Party, the disclosing Party reduces the disclosure to writing and designates such disclosure as "Confidential."

Customer. "Customer" shall be any third party purchaser of Licensed Product from Licensee or its Affiliates.

Footwear Insoles. "Footwear Insoles" shall mean proprietary designs and structures for footwear insoles, heel cushions and/or heel cups, and which are generally described as being a cushion with non-intersecting columnar elastomeric members exhibiting compression instability, and which are covered by one or more claims of the Patent Rights.

Foreign Patent Rights. "Foreign Patent Rights" shall mean (i) any and all patent applications which are filed by or on behalf of Licensor in countries or territories other than the United States (including, without limitation, the European Union) and which claim priority or otherwise correspond to one or more United States Patent Rights, (ii) any and all issued patents issuing from any such patent applications, and (iii) any reissues, reexaminations, divisions, substitutions, continuations, continuations-in-part, extensions, renewals, registrations and supplementary protection certificates or the like, of any of the foregoing.

Know-How. "Know-How" shall mean any and all proprietary and/or confidential information owned or controlled by Licensor which is related to the design, development, manufacturing, production and commercialization of Footwear Insoles.

Licensed Field of Use. "Licensed Field of Use" shall mean the design, development, manufacture, marketing, distribution and sale of full and partial footwear insoles, heel cushions, and heel cups in the Territory; provided that the use or sale of such products as components for the manufacture and sale of footwear is specifically excluded.

Licensed Product. "Licensed Product" shall mean any product or service which embodies or is made using the Technology Rights.

Materials. "Materials" shall mean any samples, models, molds, prototypes, or other tangible materials owned or controlled by a Party which is related to Footwear Insoles and which incorporates or is fabricated using Confidential Information.

Patent Rights. "Patent Rights" shall mean the United States Patent Rights and the Foreign Patent Rights.

R&D Services. "R&D Services" shall have the meaning set forth in Section 3.1.

R&D Inventions. "R&D Inventions" shall have the meaning set forth in Section 3.6.

Research Plan. "Research Plan" shall have the meaning set forth in Section 3.2.

Settlement Agreement. "Settlement Agreement" shall mean the contemporaneous settlement agreement entered into by the Parties.

Technology Rights. "Technology Rights" shall mean the Footwear Insoles, Know-How and Patent Rights.

Term. "Term" shall mean the term of this Agreement, as set forth in Section 7.1.

Territory. "Territory" shall mean all of the countries and territories in the world.

United States Patent Rights. "United States Patent Rights" shall mean (i) United States Patent Application Serial No. 60/226,726 filed on August 18, 2000, and any additional patent applications claiming priority thereto, (ii) any U.S. patents issuing from any such patent applications, and (iii) any reissues, reexaminations, divisions, substitutions, continuations, continuations-in-part, extensions, renewals, registrations of any of the foregoing.

SECTION 2. - LICENSE

2.1 License Grant. In consideration of the full performance of the terms of the Settlement Agreement, Licensor hereby grants to Licensee, and Licensee hereby accepts, a paid-up, royalty-free, perpetual, non-exclusive license under the Technology Rights to develop, make, have made, use, offer to sell, sell, import and export Licensed Products in the Territory in the Licensed Field of Use.

2.2 Sublicenses. The license granted to Licensee in Section 2.1 includes the limited right to grant sublicenses to any of Licensee's Affiliates. Licensee shall not grant any other sublicense under the Technology Rights to any third party, without the prior written consent of Licensor.

2.3 Reservation of Rights. The Parties acknowledge that all rights not expressly granted to Licensee under this Agreement are reserved by Licensor. Nothing in this Agreement shall be interpreted as preventing either Party from engaging in any activities that do not directly conflict with such Parties' obligations under this Agreement.

2.4 Licensee's Rights and Responsibilities. Licensee shall be solely responsible for obtaining and maintaining any and all necessary licenses, approvals and other government

authorizations necessary for the development and commercialization of Licensed Products by or on behalf of Licensee, including, without limitation, for the manufacture, sale, distribution, export and use thereof. Licensee shall hold all such licenses, approvals and authorizations (including, without limitation, any FDA approvals for the Licensed Product) in its own name, or in the name of its designated Affiliate, and shall own all rights, title and interest with respect thereto. Licensee shall be solely responsible for ensuring that the Licensed Products manufactured by or on behalf of Licensee comply with all applicable specifications for the Licensed Products, are manufactured in accordance with good manufacturing practices (to the extent applicable), and otherwise comply with all applicable laws, rules and regulations.

SECTION 3 - RESEARCH AND DEVELOPMENT SERVICES

3.1 **R&D Services.** At any time during the Term of this Agreement, Licensee may request Licensor to perform various research and development projects (including, without limitation, Licensed Products) as directed by Licensee (the "R&D Services"). R&D Services may include, without limitation, conceptual design, human factors analysis, product design, materials selection, materials analysis, materials testing, mold design, mold and tool making, prototype construction, manufacturing process and manufacturing system design, manufacturing system implementation, and other production gear-up services related to Licensed Products. Licensor shall keep Licensee informed of the progress of all R&D Services. Licensee shall own all data and results generated by Licensor in performance of the R&D Services; provided that Licensor is hereby granted the right to use all such data and results only for internal research purposes, and if Licensee consents, for purposes wholly outside the Licensed Field of Use.

3.2 **Project Scope and Direction.** In the event Licensee requests Licensor to perform R&D Services, Licensee shall prepare and the Parties shall agree upon a reasonable detailed written research and development plan describing the R&D Services to be performed by Licensor (the "Research Plan"). The Parties shall also agree upon scheduling and priority information, and procedures for ongoing communication and review concerning the nature and direction of the R&D Services. Licensee shall provide Licensor with any other information reasonably requested by Licensor which is necessary or useful in connection with Licensor's performance of the R&D Services.

3.3 **Performance of R&D Services.** Neither Party shall have any obligation to the other under this Agreement with respect to performance of or payment for R&D Services until the parties have agreed in writing upon a Research Plan and budget for the R&D Services. Licensor shall thereafter use diligent efforts to complete the R&D Services in accordance with the Research Plan and budget agreed upon by the Parties. Nothing herein shall be construed as a guarantee by Licensor of any particular outcome or results from the R&D Services.

3.4 **Budget/Cost of R&D Services.** The Parties shall agree in writing upon a budget for any R&D Services to be performed under this Article 3, prior to the start of each such

project. The cost of R&D Services to be performed by Licensor as set forth in the budget shall be based upon Licensor's then current standard rates for such research and development services, or such other rates as may be agreed upon by the parties. Licensor's standard rates for such services as of the Effective Date are set forth in Exhibit A, attached hereto. Licensor shall from time-to-time during the Term of this Agreement provide Licensee with a revised Exhibit A setting forth an updated schedule of such rates.

3.5 Access to Facilities and Personnel. During any period of time that R&D Services are being performed by Licensor under this Agreement, Licensor shall, upon request and at Licensee's expense, provide Licensee with access to: (i) all facilities owned or controlled by Licensor to the extent such facilities are being utilized in relation to R&D Services, (ii) all personnel who participate in providing R&D Services to Licensee; and (iii) Licensor's books and records relating to the performance of the R&D Services. The Parties acknowledge Licensor's need to protect the confidential nature of products and services it may be performing for itself or other parties. Accordingly, such access shall be during Licensor's normal business hours, shall not be so frequent as to disrupt the business operations of Licensor, and shall be subject to reasonable advance notice.

3.6 Rights in R&D Inventions. All right, title and interests in and to any inventions or discoveries (including, without limitation, any patent applications filed by or on behalf of Licensor with respect thereto, and any patents issuing therefrom) developed by Licensor during performance of R&D Services for Licensee hereunder ("R&D Inventions"), including without limitation improvements, modifications, extensions and applications of the Technology Rights or any portion thereof shall be held by Licensor. Unless otherwise mutually agreed in writing by both Parties prior to performance of specific R&D Services in accordance with a Research Plan, Licensee is hereby granted a paid-up, perpetual, royalty-free, exclusive license under R&D Inventions to develop, make, have made, use, market, distribute, offer for sale, sell, import and export footcare products in the Territory; provided, however, that the use or sale of such products as components for the manufacture and sale of footwear is specifically excluded.

3.7 R&D Credit. Licensee shall have a non-refundable credit for two hundred and fifty thousand dollars (US\$250,000.00) applicable to any R&D Services to be performed by Licensor under this Agreement. This R&D credit may not be applied to Licensor's out-of-pocket expenses, and shall be used only as a fifty percent (50%) discount from Licensor's standard rates until such credit is fully used. If the entire amount of such credit is not used by Licensee within three (3) years of the Effective Date of this Agreement, the remainder of such credit shall expire and shall not be usable or refundable.

3.8 Exclusivity Period. For a period terminating the earlier of (i) three (3) years from the Effective Date of this Agreement or (ii) on the date that the R&D Credit has been fully used, Licensor shall not contract to perform any research and development services for any third parties to develop footcare products for the after-market consumer footwear market; provided that nothing herein shall be deemed to restrict or prohibit Licensor from continuing to perform such services for third parties with whom Licensor has an existing contractual relationship as of the Effective Date. The Parties acknowledge that the restrictions imposed

upon Licensor in this Section 3.8 shall not apply to any activities performed by Licensor for Implus Corporation, which are hereby expressly exempted from such restrictions.

3.9 Payments. The costs for R&D Services performed by Licensor under this Article 3 shall be paid pursuant to detailed invoices (along with supporting documentation) to be provided by Licensor. Invoices shall be paid by Licensee within thirty (30) days of receipt from Licensor. Payment for R&D Services will generally be made for work actually performed in accordance with the Research Plan. However, invoices may be submitted periodically for work performed to date, and project completion need not have occurred. In the event that Licensor requires any pre-payment for R&D Services to be performed, such pre-paid amounts shall be agreed upon in advance and shall be set forth in the final budget approved by the Parties for the project. With respect to any overdue payments, Licensee will be charged interest at a rate of eighteen percent (18%) annually, compounded monthly. Licensee shall not be responsible for any amounts invoiced for an R&D Services project in excess of one hundred and fifteen percent (115%) of the total budget agreed upon by the Parties for such project, unless such excess costs are approved in advance by Licensee.

3.10 Termination of R&D Services. Either Party may terminate R&D Services on any project, with or without cause, at any time on ten (10) days written notice to the other Party to that effect. Upon termination of an R&D Services project, Licensor shall provide to Licensee all work in progress with respect thereto and shall return to Licensee any of Licensee's Confidential Information and or Materials which were supplied to Licensor for performance of the R&D Services being terminated. Following any such termination, Licensee's sole financial obligation to Licensor with respect to the terminated R&D Services project shall be payment for (i) valid R&D charges invoiced or accrued by Licensor prior to the date of termination, and (ii) any irrevocable commitments made by Licensor prior to notice of termination. The termination of a given R&D Services project shall not affect any other ongoing R&D Services project or the Parties' rights under this Agreement to undertake any additional R&D Services projects pursuant to this Article 3. It is further acknowledged that the termination of any R&D Services pursuant to this Section 3.10 shall have no effect on the Term of this Agreement or any of the licenses granted to Licensee hereunder.

SECTION 4 - CONFIDENTIALITY

4.1 Protection. Each of Licensor and Licensee shall not disclose or transfer to any third party any Confidential Information received by it from the other Party, and shall not use such Confidential Information for any purpose other than performance of its obligations under this Agreement, without the prior written consent of the other Party. The foregoing obligations shall survive the expiration or termination of this Agreement for a period of ten (10) years. These obligations shall not apply to Confidential Information that:

(i) is known by the receiving Party at the time of its receipt, and not through a prior disclosure by the disclosing Party, as documented by business records;

(ii) is at the time of disclosure, or thereafter becomes, published or otherwise part of the public domain without breach of this Agreement by the receiving Party;

(iii) is subsequently disclosed to the receiving Party by a third party who has the right to make such disclosure;

(iv) is independently developed by the receiving Party or its Affiliates without the aid, application or use of the disclosing Party's Confidential Information or Materials, and such independent development can be documented by the receiving Party;

(v) is disclosed to any institutional review board of any entity conducting clinical trials with Licensed Products or to any governmental or other regulatory agencies in order to obtain patents or to gain approval to conduct clinical trials or to market Licensed Product, provided that such disclosure may be made only to the extent reasonably necessary to obtain such patents or authorizations; or

(vi) is required to be disclosed by law, regulation, rule, act or order of any governmental authority or agency to be disclosed, provided that notice is promptly delivered to the other Party in order to provide an opportunity to seek a protective order or other similar order with respect to such Confidential Information and thereafter the receiving Party discloses to the requesting entity only the minimum information required to be disclosed in order to comply with the request, whether or not a protective order or other similar order is obtained by the other party.

Each of Licensor and Licensee may only disclose Confidential Information to those of its and its Affiliates' officers and employees with a legitimate need to know the Confidential Information in connection with such Party's performance under this Agreement. Each of Licensor and Licensee shall take all reasonable precautions necessary to ensure against any unauthorized disclosure, transfer or use of the other Party's Confidential Information. Nothing in this Section 4.1 shall be construed as limiting either Party's rights to disclose or transfer its own Confidential Information to any third party. In the event that Licensee desires to use a subcontractor for manufacturing Licensed Products and that subcontractor will require access to Licensor's Confidential Information or Materials, Licensee will enter into a confidentiality agreement with the subcontractor to fulfill all of the intents and purposes of this Section 4.

4.2 Publicity. A Party may not use the name of the other Party in any publicity or advertising and may not issue a press release or otherwise publicize or disclose any information related to the existence of this Agreement or the terms or conditions hereof, without the prior written consent of the other Party. Notwithstanding the foregoing, a Party may disclose such information to the extent required by law (as reasonably determined by its legal counsel), including, without limitation, as required by any Securities and Exchange Commission regulations; provided the Party who will be disclosing such information has consulted with the other Party prior to such disclosure with respect to the substance of the disclosure, and thereafter uses diligent efforts to seek confidential treatment of such

information, to the extent available. In addition, Licensors shall have the limited right to disclose in confidence the existence of this Agreement (without identifying Licensee or its Affiliates) and the Licensed Field of Use to third Parties seeking a license under the Technology Rights.

SECTION 5 - OWNERSHIP, RESPONSIBILITY ETC.

5.1 Ownership. Nothing in this Agreement shall be construed as assigning or conveying to Licensee any ownership of the Technology Rights or any portion thereof, or to Licensors any ownership of the Licensed Products or any of Licensee's intellectual property rights with respect thereto. Licensee shall not patent or attempt to patent the invention claimed in U.S. Patent Application Serial No. 60/226,726 without prior written permission from Licensors. This shall not restrict Licensee from patenting any different inventions which it makes, or has made. To the extent that employees of Licensors and Licensee jointly conceive of an invention and choose to pursue a patent for the invention, the patent shall be jointly owned by Licensors and Licensee and shall be considered "R&D Inventions" hereunder.

5.2 Responsibility for Patents, Trademarks, Etc. Licensors shall solely control and make all decisions relating to the filing, prosecution, issuance, maintenance, abandonment and defense of all aspects of the Technology Rights. Notwithstanding the foregoing, Licensors shall duly consider any and all input provided by Licensee concerning the Technology Rights, including the enforcement of Patent Rights against third party infringers. Licensee shall reimburse Licensors for any incremental out-of-pocket costs incurred by Licensors as a direct result of intellectual property work done by or on behalf of Licensors at the specific written request of Licensee. Licensors shall periodically provide Licensee with detailed invoices for any amounts to be reimbursed by Licensee under this Section 5.2, and Licensee shall pay such amounts within thirty (30) days of receiving the invoice.

5.3 Infringement of Patent Rights. If either Party learns of any activity that may constitute infringement of the Patent Rights, it shall notify the other Party of the facts surrounding such suspected infringement. Licensors shall have the sole right and discretion to enforce and defend the Patent Rights. Licensors shall have six (6) months from the date of said notice to obtain a discontinuance of such infringement, to bring suit against the third party infringer, or to inform Licensee that it does not intend to bring suit and the reasons for such decision. Licensee shall then have the right to bring suit at its option. Licensors shall bear all the expenses of any suit brought by it. To the extent that the alleged infringement relates to a third party product which competes with Licensed Product, Licensee shall have the right, prior to commencement of the trial, suit or action brought by Licensors, to join any such suit or action, and in such event shall pay one-half of the costs of such suit or action (or if one or more other licensees of the Patent Rights also join the suit, the appropriate pro-rata share of such costs when allocated between Licensors, Licensee and all other participating licensees). In the event that Licensee has joined in the action and shared in the costs thereof as set forth above, no settlement, consent judgment or other voluntary final disposition of the suit may be entered into without the

consent of Licensee, which consent shall not be unreasonably withheld. In the event that Licensee has not joined the suit or action, Licensee will, upon request, reasonably cooperate with Licensor in any such suit or action and shall have the right to consult with Licensor and be represented by its own counsel at its own expense; provided that Licensor shall periodically reimburse Licensee for its out-of-pocket costs (excluding the costs of retaining its own outside counsel) incurred in cooperating with Licensor. Any recovery or damages derived from a suit which Licensee has joined and shared costs shall be used first to reimburse each of Licensor and Licensee (and any other participating licensees) for its documented out-of-pocket legal expenses relating to the suit, with any remaining amounts to be shared equally by the Parties (and other participating licensees, if any). Any recovery or damages derived from a suit which Licensee has not joined shall be retained by Licensor. Licensor shall incur no liability to Licensee as a consequence of such litigation or any unfavorable decision resulting therefrom, including any decision holding any of the Patent Rights invalid or unenforceable.

5.4 Continuation of Infringement. If, after the expiration of the six (6) month period specified in Section 5.3, Licensor has not obtained a discontinuance of such infringement, or brought suit against the third party infringer, then Licensee shall have the right, but not the obligation, to bring suit (at Licensee's expense) against such infringer under the Patent Rights in the name of Licensor, provided that such infringer is marketing a product that competes with the Licensed Products. Licensor shall provide reasonable assistance to Licensee in any suit for infringement of a Patent Right brought by Licensee hereunder, and shall have the right to consult with Licensee and to participate in and be represented by independent counsel in such litigation at its own expense. For purposes of this Section 5.4, reasonable assistance shall mean providing Licensee reasonable access to information, materials and Licensor's personnel which are necessary to enable Licensee conduct of the suit. Licensee shall periodically reimburse Licensor for its out-of-pocket costs (excluding costs of retaining independent counsel) incurred in cooperating with Licensor. Licensee shall incur no liability to Licensor as a consequence of such litigation or any unfavorable decision resulting therefrom, including any decision holding any of the Patent Rights invalid or unenforceable. In the event that Licensee recovers any sums in such litigation brought by it under this Section 5.4 by way of damages or in settlement thereof, Licensee shall have the right to retain all such sums.

5.5 Patent Marking. To the extent that Licensor obtains any issued patents within the Patent Rights which contain one or more claims covering Licensed Product marketed and sold by Licensee, Licensor shall inform Licensee of appropriate patent marking to be placed on such Licensed Products and their packaging, and Licensee shall utilize such marking.

SECTION 6 - WARRANTIES, DISCLAIMERS, ETC

6.1 DISCLAIMERS. LICENSOR MAKES NO WARRANTIES, EXPRESS, IMPLIED OR STATUTORY THAT ARE NOT EXPRESSLY SET FORTH IN THIS AGREEMENT WITH RESPECT TO THE TECHNOLOGY RIGHTS, OR THE RESULTS OF THE R&D SERVICES, OR THE LICENSED PRODUCTS. THE

TECHNOLOGY RIGHTS ARE MADE AVAILABLE TO LICENSEE STRICTLY ON AN "AS IS" BASIS. LICENSOR DOES NOT WARRANT THAT THE TECHNOLOGY RIGHTS OR THE RESULTS OF THE R&D SERVICES HAVE UTILITY, ARE ERROR FREE, ARE SAFE, ARE RELIABLE, THAT THEY WILL MEET LICENSEE'S REQUIREMENTS, OR THAT ANY PART OF THEM ARE PATENTABLE OR THAT THE PATENTS WILL BE VALID WHEN GRANTED OR THAT THE EXPLOITATION OF THE TECHNOLOGY RIGHTS OR RESULTS OF THE R&D SERVICES OR COMMERCIALIZING LICENSED PRODUCTS WILL NOT INFRINGE ANY EXISTING OR FUTURE PATENT, TRADEMARK OR OTHER LEGAL RIGHTS OF ANY THIRD PARTY. ANY IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE AND NONINFRINGEMENT ARE EXPRESSLY DISCLAIMED AND EXCLUDED. THE ENTIRE RISK AS TO THE RESULTS AND PERFORMANCE OF THE TECHNOLOGY RIGHTS AND THE LICENSED PRODUCTS IS ASSUMED BY LICENSEE.

6.2 REPRESENTATIONS BY BOTH PARTIES. EACH OF LICENSEE AND LICENSOR HEREBY REPRESENTS AND WARRANTS TO THE OTHER PARTY THAT: (A) IT HAS THE RIGHT, ABILITY AND AUTHORITY TO ENTER INTO THIS AGREEMENT AND PERFORM ITS OBLIGATIONS HEREUNDER; (B) IT HAS EXECUTED NO OTHER AGREEMENT IN CONFLICT WITH THIS AGREEMENT; (C) THAT IT SHALL COMPLY WITH ALL APPLICABLE LAWS, RULES AND REGULATIONS IN CONNECTION WITH THE PERFORMANCE OF ITS OBLIGATIONS UNDER THIS AGREEMENT; AND (D) THAT IT WILL NOT KNOWINGLY USE ANY INDIVIDUAL IN CONNECTION WITH THE PERFORMANCE OF ANY OF ITS OBLIGATIONS UNDER THIS AGREEMENT WHO HAS BEEN DEBARRED PURSUANT TO THE UNITED STATES FOOD, DRUG AND COSMETIC ACT, OR WHO HAS BEEN EXCLUDED FROM A FEDERAL HEALTH CARE PROGRAM.

6.3 Representations by Licensor. Licensor hereby represents, warrants and covenants to Licensee as follows:

- (a) to the best of Licensor's knowledge, as of the Effective Date the Patents Rights are subsisting and are not invalid or unenforceable, in whole or in part;
- (b) as of the Effective Date it has the full right, power and authority to grant all of the right, title and interest in the licenses granted to Licensee under this Agreement;
- (c) to the best of Licensor's knowledge, as of the Effective Date it is the sole and exclusive owner of the Technology Rights, all of which are free and clear of any liens, charges and encumbrances, and no other person, corporate or other private entity, or governmental entity or subdivision thereof, has or shall have any claim of ownership with respect to the Technology Rights; and

(d) as of the Effective Date there are no claims, judgments or settlements against or owed by Licensor, or pending or threatened claims or litigation against Licensor relating to the Technology Rights.

6.4 LIMITATION ON LIABILITY. LICENSOR SHALL NOT BE LIABLE FOR ANY LIABILITY, CLAIM, LOSS, DAMAGE OR EXPENSE OF ANY KIND OR NATURE CAUSED DIRECTLY OR INDIRECTLY BY ANY INADEQUACY, DEFICIENCY, OR UNSUITABILITY OF THE TECHNOLOGY RIGHTS, THE TRADEMARK RIGHTS, THE R&D SERVICES OR THE LICENSED PRODUCTS. IN NO EVENT SHALL LICENSOR BE LIABLE FOR ANY INDIRECT, PUNITIVE, SPECIAL OR CONSEQUENTIAL DAMAGES (INCLUDING BUT NOT LIMITED TO, LOSS OF INVESTMENT, LOSS OF ANTICIPATED PROFITS, OR OTHER ECONOMIC LOSS) ARISING FROM ANY INADEQUACY, DEFICIENCY, OR UNSUITABILITY OF THE TECHNOLOGY RIGHTS, THE R&D SERVICES, THE TRADEMARK RIGHTS OR THE LICENSED PRODUCTS, EVEN IF ADVISED OF THE POSSIBILITY THEREOF.

6.5 Indemnification by Licensee. Licensee shall indemnify, defend and hold harmless Licensor and its Affiliates, and each of its and their respective employees, officers, directors and agents (each, a "Licensor Indemnified Party") from and against any and all liability, loss, damage, cost, and expense (including reasonable attorneys' fees), which a Licensor Indemnified Party may incur, suffer or be required to pay resulting from or arising out of: (i) the manufacture, promotion, distribution, use, marketing, sale or other disposition of Licensed Products by Licensee or its Affiliates; (ii) any breach by Licensee of any of its representations, warranties and covenants contained in this Agreement; or (iii) the gross negligence or willful misconduct of Licensee, its Affiliates, or any of their respective employees, officers directors or agents. Notwithstanding the foregoing, Licensee shall have no obligation under this Agreement to indemnify, defend or hold harmless any Licensor Indemnified Party with respect to claims, demands, costs or judgments to the extent caused by the gross negligence or willful misconduct of Licensor, its Affiliates, or any of their respective employees, officers, directors or agents.

6.6 Indemnification by Licensor. Licensor shall indemnify, defend and hold harmless Licensee and its Affiliates, and each of its and their respective employees, officers, directors and agents (each, a "Licensee Indemnified Party") from and against any and all liability, loss, damage, cost, and expense (including reasonable attorneys' fees), which a Licensee Indemnified Party may incur, suffer or be required to pay resulting from or arising out of: (i) the performance of any R&D Services by Licensor; (ii) any breach by Licensor of any of its representations, warranties and covenants contained in this Agreement; or (iii) the gross negligence or willful misconduct of Licensor, its Affiliates, or any of their respective employees, officers directors or agents. Notwithstanding the foregoing, Licensor shall have

no obligation under this Agreement to indemnify, defend or hold harmless any Licensee Indemnified Party with respect to claims, demands, costs or judgments to the extent caused by the gross negligence or willful misconduct of Licensee, its Affiliates, or any of their respective employees, officers, directors or agents.

6.7 Notification of Liability. The obligations of the indemnifying Party under Sections 6.5 and 6.6 are conditioned upon the delivery of written notice to the indemnifying Party of any potential liability for which it intends to seek indemnification promptly after the indemnified Party becomes aware of such potential liability. However, the Parties acknowledge and agree that failure of the indemnified Party to promptly notify the indemnifying Party of a potential liability shall not constitute a waiver of, or result in the loss of, such Party's right to indemnification under this Agreement, except to the extent that the indemnifying Party's rights, and/or its ability to defend against such liability, are materially prejudiced by such failure to notify.

6.8 Settlements. Neither Party may settle a claim or action related to a liability for which indemnification is sought hereunder without the consent of the other Party, which consent shall not be unreasonably withheld, if such settlement would impose any monetary obligation on the other Party or require the other Party to submit to an injunction or otherwise limit the other Party's rights under this Agreement. Any payment made by a party to settle any such claim or action shall be at its own cost and expense.

SECTION 7 - TERM AND TERMINATION

7.1 Term. The "Term" of this Agreement and the licenses granted to Licensee hereunder shall begin on the Effective Date and shall remain in effect in each country in the Territory as a perpetual license, unless terminated for one or more countries in the Territory pursuant to the express terms of this Agreement. This Agreement and the licenses granted to Licensee hereunder can only be terminated by mutual written agreement of the Parties or as otherwise specifically provided in Section 7.2 or 7.5.

7.2 Termination by Licensee. Licensee may terminate the licenses granted hereunder on a country-by-country basis, or terminate this Agreement and such licenses in their entirety, by providing Licensor with at least ninety (90) days prior written notice of such termination. Termination shall be effective on the date specified by Licensee in such notice, but not sooner than ninety (90) days from the date of such notice. If no date is specified in such notice, then termination shall be effective ninety (90) days following the date of such notice. If the notice does not specify which country or countries in the Territory for which the license is being terminated, then termination shall be deemed to be effective for termination of the entire Agreement and all of the licenses granted hereunder.

7.3 Breach for Initiating Adverse Proceeding or Litigation. If Licensee initiates any proceeding or litigation which seeks a ruling of invalidity or unenforceability of any of the Patent Rights, unless such initiation or participation is pursuant to Licensor's written instructions, with the caveat that nothing in this Agreement shall be construed as prohibiting or limiting Licensee's initiation of any such proceeding or litigation; the consequence of such initiation which is not pursuant to Licensor's written instructions, however, shall be that such initiation by Licensee shall constitute a material breach of this agreement.

7.4 Breach for Initiating Reexamination Proceeding. If Licensee initiates any reexamination proceeding concerning any of the Patent Rights, including but not limited to citing prior art to any patent office in any country of the world, unless such initiation is pursuant to Licensor's written instructions, with the caveat that nothing in this Agreement shall be construed as prohibiting or limiting Licensee's initiation of any such proceeding ; the consequence of such initiation which is not pursuant to Licensee's written instructions, however, shall be that such initiation by Licensee shall constitute a material breach of this agreement.

7.5 Breach. This Agreement may be terminated in its entirety by either Party on ninety (90) days written notice in the event that the other Party breaches a material term of this Agreement and fails (i) to cure such material breach within ninety (90) days of receiving notice of such breach, or (ii) in the event that such breach cannot be reasonably cured within such ninety (90) day period, fails to initiate steps during such ninety (90) day period which are reasonably designed to cure the breach and thereafter diligently proceeds to cure the breach. The Parties acknowledge that they have included provisions in this Agreement related to the performance of, and payment for, R&D Services for the convenience of the Parties but that all such provisions are unrelated to and separate from the licenses granted to Licensee hereunder. Accordingly, the Parties acknowledge and agree that breach of one or more of the provisions of Article 3 of this Agreement, including, without limitation, the breach of any and all financial obligations related thereto, shall not be deemed to be the breach of a material term of this Agreement for purposes of this Section 7.5. Neither Party shall have the right to terminate this Agreement or any of licenses granted to Licensee hereunder due to a breach of any provisions of this Agreement related to performance of, or payment for, such R&D Services.

7.6 Effect of Termination. Upon the termination of the license for any particular country in the Territory, or for the entire Territory:

(i) Licensee shall, within ninety (90) days of such termination, cease making, using and selling Licensed Product in the country(ies) of the Territory for which the license has terminated,

(ii) if the Agreement has terminated for the entire Territory, each Party shall return to the other Party, all of such other Party's Confidential Information and/or Materials in

its possession, or alternatively destroy all such Confidential Information and Materials and provide written certification to that effect, and

7.7 Surviving Provisions. Notwithstanding the termination of this Agreement for any reason, Sections 3.6 and 7.6, and Articles 4, 5, 6 and 8 of this Agreement shall survive such termination and shall remain in full force and effect.

SECTION 8 - GENERAL PROVISIONS

8.1 Severability. In case any one or more of the provisions contained herein shall, for any reason, be held to be invalid, illegal, or unenforceable in any respect, such invalidity, illegality or unenforceability shall not affect any other provisions of this Agreement, and this Agreement shall be construed as if such invalid, illegal or unenforceable provision(s) had never been contained herein; provided that such invalid, illegal or unenforceable provisions shall first be curtailed, limited or eliminated to the extent necessary to remove such invalidity, illegality or unenforceability with respect to the applicable law as it shall then be applied.

8.2 Governing Law and Forum. This Agreement shall be governed, construed and enforced exclusively in accordance with the laws of the State of Utah and the laws of the United States of America.

8.3 Final Agreement. This Agreement together with the Settlement Agreement constitutes the final and complete agreement between the Parties concerning the subject matter of this Agreement and supersedes all prior agreements, understandings, negotiations and discussions, whether written or oral (including prior drafts of this Agreement), between the Parties with respect thereto. No Party shall be bound by any condition, definition, representation, or warranty, other than as expressly set forth herein. Any modification, revision or amendment of this Agreement shall not be effective unless made in a writing executed by both of the Parties.

8.4 Waiver. Any delay or failure in enforcing a Party's rights under this Agreement or any waiver as to a particular default or other matter shall not constitute a waiver of such Party's rights to the future enforcement of its rights under this Agreement, nor operate to bar the exercise or enforcement thereof at any time or times thereafter, excepting only as to an express written and signed waiver as to a particular matter for a particular period of time.

8.5 Headings. The headings in this Agreement are for the purpose of convenience only and shall not limit, enlarge or affect any of the covenants, terms, conditions or provisions of this Agreement.

8.6 Notices. All notices, requests, demands and other communications hereunder shall be in writing and shall be sent (i) by registered or certified mail, return receipt requested, or (ii) by commercial courier, or (iii) by facsimile transmission to the Parties at the addresses

set forth below, with written confirmation by registered first-class mail, to the Parties at the addresses and facsimile numbers set forth below, or to such other person and place as either Party may hereafter designate by written notice to the other Party.

If to Licensor: EdiZONE, LC
 220 N. 1300 W. #1
 Pleasant Grove, UT 84062
 Attention: Tony M. Pearce
 Facsimile #: (801) 785-2611

If to Licensee: Schering-Plough HealthCare Products, Inc.
 3030 Jackson Avenue
 Memphis, Tennessee 38151
 Attention: President

with copies to:

Schering Corporation
2000 Galloping Hill Road
Kenilworth, New Jersey 07033
Attention: Law Department, Staff VP, Licensing
Facsimile #: (908)298-2739

Any such notice shall be deemed to have been received on the earlier of the date actually received or the date five (5) days after the same was posted or sent.

8.7 Export Control. This Agreement is made subject to any restrictions concerning the export of products or technical information from the United States of America which may be imposed upon or related to Licensee or Licensor from time to time by the government of the United States of America. Furthermore, Licensee agrees that it will not export, directly or indirectly, any technical information acquired from Licensor under this Agreement or any products using such technical information to any country for which the United States government or any agency thereof at the time of export requires an export license or other governmental approval, without first obtaining the written consent to do so from the Department of Commerce or other agency of the United States government when required by an applicable statute or regulation.

8.8 Assignment. Licensee shall not, and Licensee has neither the right nor the power to, assign the License or this Agreement to any other person or entity without the advance written consent of Licensor. In the event that Licensee merges with any other entity, changes its name, or otherwise transforms into a new entity, this Agreement shall be deemed binding upon and enforceable against such new or other entity. Licensor may, at its sole option, assign its rights or obligations hereunder, provided that any third party beneficiaries or third party delegates agree in writing that each such assignment to which the third party

beneficiaries or third party delegates are parties is subject to the applicable terms and conditions of this Agreement.

8.9 Relationship. The Parties hereunder are independent contractors and neither Party is or shall be deemed to be a partner, joint venturer, agent or representative of the other Party. Neither Party shall have any power to enter into any contracts or commitments or to incur any liabilities in the name of, or on behalf of, the other Party, or to bind the other Party in any respect whatsoever.

8.10 Insolvency. All rights and licenses granted by Licensor to Licensee under or pursuant to this Agreement are, for all purposes of Section 365(n) of Title 11 of the United States Code (the "Insolvency Statute"), licenses of rights to "intellectual property" as defined in the Insolvency Statute. Licensor agrees during the term of this Agreement to create and maintain current copies or, if not amenable to copying, detailed descriptions or other appropriate embodiments, to the extent feasible, of all such intellectual property. If a case is commenced by or against Licensor under the Insolvency Statute, then, unless and until this Agreement is rejected as provided in the Insolvency Statute, Licensor (in any capacity, including debtor-in-possession) and its successors and assigns (including, without limitation, an Insolvency Statute "Trustee" (as defined therein)) shall, as Licensee may elect in a written request, immediately upon such request:

- (i) perform all of the obligations provided in this Agreement to be performed by Licensee including, where applicable and without limitation, providing to Licensor portions of such intellectual property (including embodiments thereof) held by Licensor and such successors and assigns or otherwise available to them; or
- (ii) provide to Licensee all such intellectual property directly related to the Licensed Product (including all embodiments thereof) held by Licensor and such successors and assigns or otherwise available to them.

If an Insolvency Statute case is commenced by or against Licensor, and this Agreement is rejected as provided in the Insolvency Statute, and Licensee elects to retain its rights hereunder as provided in the Insolvency Statute, then Licensor (in any capacity, including debtor-in-possession) and its successors and assigns (including, without limitation, an Insolvency Statute Trustee) shall provide to Licensee all such intellectual property directly related to the Licensed Product (including all embodiments thereof) held by Licensee and such successors and assigns, or otherwise available to them, immediately upon Licensee's written request. Whenever Licensor or any of its successors or assigns provides to Licensee any of the intellectual property licensed hereunder (or any embodiment thereof) pursuant to this Section 8.10, Licensee shall have the right to perform the obligations of Licensor hereunder with respect to such intellectual property, but neither such provision nor such performance by Licensee shall release Licensor from any such obligation or liability for failing to perform it.

powers and remedies of Licensee provided herein are in addition to and in for any and all other rights, powers and remedies now or hereafter in equity (including, without limitation, under the Insolvency Statute). In commencement of an Insolvency Statute case by or against Licensor, in addition to the rights, power and remedies expressly provided herein, shall be all other such rights and powers and resort to all other such remedies as may exist at law or in equity (including, without limitation, the Insolvency Statute). The Parties agree that they intend the foregoing Licensee rights to the maximum extent permitted by law, including, without limitation, for purposes of the Insolvency Statute:

the right of access to any intellectual property directly related to the Licensed Product (including all embodiments thereof) of Licensor, or any third party with whom Licensor contracts to perform an obligation of Licensor under this Agreement, and, in the case of the third party, which is necessary for the development, registration, manufacture and marketing of Licensed Products;

the right to contract directly with any third party described in (i) to complete the contracted work.

Force Majeure. Failure of a Party to perform its obligations under this Agreement (notwithstanding the obligation to make payments when properly due) shall not subject the Party to liability or place them in breach of any term or condition of this Agreement if such failure is due to any cause beyond the reasonable control of the non-performing Party ("force majeure"), unless conclusive evidence to the contrary is presented. Causes of non-performance constituting force majeure shall include, but not be limited to, acts of God, fire, explosion, flood, drought, war, riot, sabotage, embargo, labor trouble, failure in whole or in part of suppliers to deliver on schedule, equipment or machinery, interruption of or delay in transportation, a national emergency or compliance with any order or regulation of any government entity of right. The Party affected shall promptly notify the other Party of the existing force majeure as defined herein and shall exert reasonable efforts to overcome any such causes and to resume performance of its obligations as soon as possible; provided that nothing herein shall obligate a Party to settle on terms with any such party any strike, lockout or other labor difficulty, any investigation or litigation by any public authority or any litigation by any third party. If a condition of force majeure as defined herein exists for more than ninety (90) consecutive days, the Parties shall meet to negotiate a mutually satisfactory resolution to the problem, if

Execution. This Agreement may be executed in any number of counterparts, all of which shall be deemed an original, but all of which taken together shall constitute one and the same agreement. The individuals signing below represent that they are duly authorized to sign on behalf of the Party for whom they are signing. When this Agreement has

been executed by the duly authorized representatives of the Parties, it shall be effective as of the date of the last execution.

8.13 Recording. Each Party shall have the right, at any time, to record, register, or otherwise notify this Agreement in appropriate governmental or regulatory offices anywhere in the world, and each Party shall provide reasonable assistance to the other in effecting such recording, registering or notifying. The Parties acknowledge that this Agreement may be notified to the European Community for compliance with applicable laws.

8.14 Further Acts. Each Party agrees to execute, acknowledge and deliver such further instruments, and to do all other acts, as may be necessary or appropriate in order to carry out the purposes and intent of this Agreement including, without limitation, any filings with any antitrust agency which may be required

IN WITNESS WHEREOF, the Parties hereto have caused this Agreement to be duly executed and entered into as of the date first above written.

LICENSEE:

SCHERING-PLOUGH HEALTHCARE
PRODUCTS, INC.

By: [Signature]
Name: Mark Kirn-Slaboszewicz
Title: President
Date: 5/18/01

LICENSOR:

EDIZONE, LC

By: [Signature]
Name: Tony M. Pearce
Title: Manager
Date: 11 April 2001

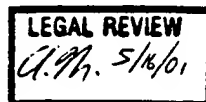


Exhibit A

Schedule of Rates for R&D Services

EdiZONE's current rates for R&D Services are determined as follows: "Direct Labor", defined as the wages paid to EdiZONE employees, temporary employees, in-house job shoppers, owners, and others acting as or under the direct supervision of EdiZONE managers, including benefits and employment taxes and excluding bonuses and retirement plans; plus an overhead burden factor of two (2.00) times Direct Labor; plus outside materials, subcontracts and other outside expenses marked up fifteen percent (15%) as an overhead factor; plus then-current standard hourly rates for equipment usage (e.g., CNC milling machines, extruders, injection molding machines, rotational molding machines, and other equipment and machinery). Principles of EdiZONE reserve the right to forego a personal wage and specify a wage level which shall be invoicable to the customer as though it were a normal wage. The time of EdiZONE accountants and clerical employees shall not be billed to the customer unless the customer makes requests for customer-specific accounting or clerical services. General management of EdiZONE and its employees shall not be billed to the customer; however, direct project management of any R&D Services by EdiZONE management, including internal meetings and meetings with the customer, shall be billed.

Current Direct Labor wages of EdiZONE employees as of the Effective Date, to which the overhead burden factor will apply, are as follows, along with their principle function, though it is understood that any employee may operate in any capacity at EdiZONE at any given time.

<u>Name</u>	<u>Principle Function</u>	<u>Direct Labor</u>
Terry Pearce	Principal	\$97.48
Tony Pearce	Principal	\$97.30
Joseph Nilson	Marketing	\$42.71
Robert Rasmussen	Marketing	\$42.71
Steven Bobowski	Tool maker / machinist	\$30.31
Michael Pritchett	Tool maker / machinist	\$27.61
Robert Watters	Senior Technician	\$22.12
Robert Taylor	Senior Technician	\$19.87
Charles Howes	Technician	\$10.14

Current hourly rates for equipment usage are as follows:

<u>Machine Name</u>	<u>Hourly Machine Rate</u>
Fadal 6030 CNC Vertical Milling Machine	\$40
Fadal 4020 CNC Vertical Milling Machine	\$30
Milltronics Partner I CNC Vertical Milling Machine	\$30
Berstorff 25mm Twin Screw Extruder	\$35
Toshiba 390-Ton Injection Molding Machine	\$40
Toshiba 250-Ton Injection Molding Machine	\$35
Toshiba 120-Ton Injection Molding Machine	\$30
FSP Rotational Molding Machine	\$25
Charmilles Plunge EDM	\$25

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Inventors: Tony M. Pearce
Title: Cushions with Non-Intersecting-Columnar Elastomeric Members
Exhibiting Compression Instability
Filed: August 17, 2001
Serial No.: 09/932,393
Docket: 03886.029/5050.1 P
Examiner: Peter D. Mulcahy
Group Art Unit: 1713

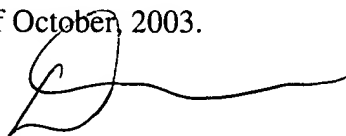
Commissioner for Patents
P. O. Box 1450
Alexandria, Virginia 22313-1450

Certificate of Mailing

Honorable Commissioner:

I hereby certify that the attached Declaration of Tony M. Pearce is being submitted via First Class Mail with the United States Postal Service in an envelope with sufficient postage on October 7, 2003, the envelope being addressed to: Commissioner for Patents, P. O. Box 1450, Alexandria, Virginia 22313-1450.

Respectfully submitted this 7th day of October, 2003.



Daniel McCarthy
Reg. No. 36,600
Parsons, Behle & Latimer
201 South Main Street, Suite 1800
Salt Lake City, Utah 84145
Tel: (801) 536-6830 or (801) 532-1234
Fax: (801) 536-6111
Email: DMcCarthy@pblutah.com